

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III.B.2.

Agenda Item Summary: The Department requests the Board initiate rulemaking to amend the air quality incorporation by reference rules to adopt the current editions of federal regulations and statutes, state statutes, and state rules. Other proposed amendments that are included in this rulemaking would repeal references to small municipal waste combustion units, change language in Subchapter 8 to make it consistent with the comparable CFR regulations, exclude incorporation of CFR sections included in the federal Clean Air Mercury Rule (CAMR), update grammar and punctuation, and renumber certain subsections.

List of Affected Rules: This rulemaking would amend ARM 17.8.101, 17.8.102, 17.8.103, 17.8.302, 17.8.340, 17.8.767, 17.8.801, 17.8.802, 17.8.818, 17.8.902, 17.8.1002, 17.8.1202, and 17.8.1502.

Affected Parties Summary: The proposed rule amendments could affect all parties regulated by the Department under the air quality rules.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking, conduct a public hearing to consider the proposed amendments to the above-stated rules and take testimony on inclusion of the rule amendments into the State Implementation Plan (SIP).

Background: Annually, the Department requests that the Board update the rules that incorporate by reference federal regulations and statutes, state statutes, and state administrative rules. The incorporation by reference updating is accomplished by amending the dates in ARM 17.8.102. An attachment addresses the major changes in federal rules that will be adopted as a result of this action. The failure to adopt the most recent edition of the Code of Federal Regulations may result in the loss of primacy for the air program. Other proposed amendments would repeal references to small municipal waste combustion units as suggested by the EPA after closure of the Park County incinerator; would change language in Subchapter 8 to add a significance level for hydrogen sulfide (H₂S) and add a net emissions increase level for H₂S to make the language consistent with the comparable CFR regulations; would exclude incorporation of all sections in 40 CFR Parts 60, 72, and 75 that are included in the federal Clean Air Mercury Rule (CAMR); and would make minor editorial changes to update grammar and punctuation and to renumber certain subsections for consistency with other air quality rules.

Hearing Information: The Department recommends the Board appoint a hearing officer and conduct a public hearing to take comment on the proposed amendments and inclusion of the proposed amendments in the SIP. Section 75-2-205, MCA, states that no rule, rule amendment, or rule repeal under the Clean Air Act of Montana may take effect except after public hearing on due notice. EPA regulations require a public hearing to take comment on adoption of revisions to the SIP.

Board Options: The Board may:

1. Authorize the Department to initiate rulemaking and issue the attached Notice of Proposed Amendment of Rules;
2. Modify the Notice and initiate rulemaking; or
3. Determine that the amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking, conduct a hearing, and appoint a hearing officer as described in the proposed MAR notice.

Description of Proposed Rule Revisions:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES (1) Unless expressly provided otherwise, in this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2004~~ 2005, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference is to the 2000 edition of the USC and Supplement I ~~III~~ (2003);

(c) referred to a section of the Montana Code Annotated (MCA), the reference is to the ~~2003~~ 2005 edition of the MCA;

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2004~~ 2005, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

The proposed amendments to ARM 17.8.101 would update grammar and punctuation. The proposed amendments to ARM 17.8.103(1), 17.8.302(1), 17.8.767(1), 17.8.802(1), 17.8.902(1), 17.8.1002(1), 17.8.1202(1), and 17.8.1502(1) would exclude from incorporating by reference the federal Clean Air Mercury Rule (CAMR), to allow the Board to determine the appropriate mercury rules for the state in a separate rulemaking proceeding. The proposed amendments to ARM 17.8.302(1)(a)(i) and 17.8.340(6) would repeal references to small municipal waste combustion units (SMWCU). This action was requested by the EPA following the closure of the Park County incinerator, the only SMWCU in the state, in May 2005. The proposed amendments to ARM 17.8.801(27) and 17.8.818(7)(a) would add a significance level and a net emissions increase level for hydrogen sulfide (H₂S), to maintain consistency between federal regulations and the state rules. The proposed amendments to ARM 17.8.1502 would renumber subsections for consistency with other subchapters. These amendments are described in the proposed MAR notice.

Enclosures:

1. Proposed Notice of Public Hearing on Proposed Amendment

Board of Environmental Review
Attachment to Executive Summary

This attachment lists the major changes to the Code of Federal Regulations (CFR) sections that are incorporated by reference in the air program rules, and were published in the Federal Register between July 1, 2004 and June 30, 2005. These changes are included in the July 1, 2005, CFR edition that is being incorporated by reference in this rulemaking.

CFR Sections Affected: 40 CFR 50.3, 50.7, Appendices K, M, and N; 40 CFR 58.13

General Explanation: In *American Trucking Associations v. EPA*, 175 F. 3d 1027 (D.C. Cir. 1999), the court vacated the **PM10 national ambient air quality standards (NAAQS)** that EPA adopted in 1997. In its 2004 action, EPA promulgated amendments to remove the vacated 1997 PM10 standards and related requirements from the CFR.

CFR Sections Affected: 40 CFR 51.100(s)

General Explanation: EPA promulgated amendments to **revise the definition of volatile organic compounds (VOC)**. Four compounds were added to the list of compounds excluded from the definition of VOC. An additional revision stated that t-butyl acetate (TBAC) will not be VOC for purposes of VOC emissions limitations or content requirements, but will continue to be VOC for purposes of recordkeeping, emissions reporting, and inventory requirements.

CFR Sections Affected: 40 CFR 60.17, and 331-335

General Explanation: EPA promulgated amendments to several sections of the **standards of performance for stationary gas turbines**. The amendments codified several alternative testing and monitoring procedures that had routinely been approved by EPA.

CFR Sections Affected: 40 CFR 63.14; 63.2230-2292, Tables & Appendices (subpart DDDD)

General Explanation: EPA promulgated **national emission standards for hazardous air pollutants (NESHAP) for the plywood and composite wood products source** category. This action requires all major sources subject to the rule to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT).

CFR Sections Affected: 40 CFR 63.14; 63.7480-7575, Tables & Appendix (subpart DDDDD)

General Explanation: EPA promulgated **national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters**. This action requires all major sources to meet HAP emissions standards reflecting the application of the maximum achievable control technology (MACT).

CFR Sections Affected: 40 CFR 63.63

General Explanation: EPA amended the list of hazardous air pollutants (HAP) contained in section 112(b)(1) of the Clean Air Act by **removing the compound ethylene glycol monobutyl ether (EGBE) from the group of glycol ethers**.

CFR Sections Affected: 40 CFR 63.1086, 1095, 1100, and 1103

General Explanation: EPA promulgated amendments to the **national emission standards for hazardous air pollutants (NESHAP) for source categories: generic maximum control**

technology standards, and the **national emission standards for ethylene manufacturing units: heat exchange systems and waste operations**. The amendments include clarification of the compliance requirements for benzene waste streams and the requirements for heat exchangers and heat exchanger systems.

CFR Sections Affected: 40 CFR 63.1503, 1506, 1510, 1512-1513, 1516, and Tables 2 and 3

General Explanation: EPA promulgated amendments to the **national emission standards for hazardous air pollutants (NESHAP) for secondary aluminum production** to clarify regulatory text, correct errors, and improve understanding of the rule requirements.

CFR Sections Affected: 40 CFR 63.1562, 1564, 1566-1567, 1572-1574, 1576, 1579, Tables 1, 3-7, 15-28, 31, 33-34, 36, 38-41, 44, and Appendix A

General Explanation: EPA promulgated amendments to the **national emission standards to control hazardous air pollutants emitted from catalytic cracking units, catalytic reforming units, and sulfur recovery units at petroleum refineries**. The amendments changed the affected source designations and added new compliance options for catalytic reforming units that use different types of emission control systems, new monitoring alternatives for catalytic cracking units and catalytic reforming units, and a new procedure for determining the metal or total chloride concentration on catalyst particles.

CFR Sections Affected: 40 CFR 63.2840

General Explanation: EPA promulgated amendments to the **national emission standards for hazardous air pollutants (NESHAP) for solvent extraction for vegetable oil production**. This action amended the compliance requirements for vegetable oil production processes that exclusively use a qualifying low-hazardous air pollutants (HAP) extraction solvent.

CFR Sections Affected: 40 CFR 63.6095

General Explanation: EPA promulgated rules to stay the effectiveness of two subcategories of the **national emission standards for hazardous air pollutants (NESHAP) for stationary combustion turbines**: lean premix gas-fired turbines and diffusion flame gas-fired turbines. Pending the outcome of EPA's 2004 proposal to delete these subcategories from the source category list, EPA is staying the effectiveness of the emissions and operating limitations in the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories.

CFR Sections Affected: 40 CFR 63.8681, 8687, 8698, and Table 5

General Explanation: EPA promulgated amendments to the **national emission standards for hazardous air pollutants (NESHAP) for asphalt processing and asphalt roofing manufacturing** to correct minor errors and add a clarifying exemption.

CFR Sections Affected: 40 CFR 93.101-102, 104, 106, 109-110, 116-117, 119-122, 124-126

General Explanation: EPA promulgated amendments to the **transportation conformity rule** to finalize several provisions that were proposed last year, including criteria and procedures for the new 8-hour ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards.